

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Timothy O. Head, #B-225,

Plaintiff,

vs.

Sumter Police Dept.;
Officer Dubose; and
Officer Turner,

Defendants.

) C/A No. 0:05-2925-MBS-BM

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**REPORT AND
RECOMMENDATION**

This action has been filed by the Plaintiff, pro se, pursuant to 42 U.S.C. § 1983.

Plaintiff alleges violations of his constitutional rights by the named Defendants.

Plaintiff has filed a motion which has been docketed as a motion for summary judgment (Court Document No. 36). This motion apparently seeks summary judgment in the event the undersigned does not reconsider the previous order denying him appointment of counsel. As the undersigned finds no reason to reconsider this Court's previous order, this Report and Recommendation is submitted on Plaintiff's request for summary judgment.

Plaintiff writes in a disjointed and often rambling style, but appears to claim in this action that he was falsely arrested and subjected to malicious prosecution by the Defendant Dubose, while the Defendant Turner used excessive force against him during an arrest. In his motion, Plaintiff generally talks about his claims and about why he is entitled to relief, and also complains that it will be difficult for him to prosecute this case from the State of Idaho, where he is presently incarcerated. Plaintiff is not, however, entitled to the relief he seeks. In order to be entitled to summary judgment, Plaintiff must present sufficient evidence to show that judgment on the



pleadings is appropriate, and that there are no genuine issues for trial. See Rule 56, Fed.R.Civ.P.

Plaintiff has presented no evidence in this case, and he cannot obtain summary judgment relief based solely on the general and conclusory arguments he has presented in his motion.

Based on the foregoing, it is recommended that Plaintiff's motion for summary judgment be **denied**.

The parties are referred to the Notice Page attached hereto.

A handwritten signature in black ink, appearing to read 'B. Marchant', is positioned above the printed name.

Bristow Marchant
United States Magistrate Judge

May 18, 2006
Columbia, South Carolina

A handwritten signature in black ink, appearing to read 'B. Marchant', is located in the bottom left corner of the page.

Notice of Right to File Objections to Magistrate Judge's Report and Recommendation
&
The Serious Consequences of a Failure to Do So

The parties are hereby notified that any objections to the attached Report and Recommendation (or Order and Recommendation) must be filed within ten (10) days of the date of its filing. 28 U.S.C. § 636 and Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three days for filing by mail. Fed. R. Civ. P. 6. Based thereon, this Report and Recommendation, any objections thereto, and the case file will be delivered to a United States District Judge fourteen (14) days after this Report and Recommendation is filed. Advance Coating Technology, Inc. v. LEP Chemical, Ltd., 142 F.R.D. 91, 94 & n. 3 (S.D.N.Y. 1992). A magistrate judge makes only a recommendation, and the authority to make a final determination in this case rests with the United States District Judge. See Mathews v. Weber, 423 U.S. 261, 270-271 (1976); and Estrada v. Witkowski, 816 F. Supp. 408, 410 (D.S.C. 1993).

During the ten-day period, but not thereafter, a party must file with the Clerk of Court specific, written objections to the Report and Recommendation, if he wishes the United States District Judge to consider any objections. Any written objections must *specifically identify* the portions of the Report and Recommendation to which objections are made *and* the basis for such objections. Failure to file written objections shall constitute a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the United States District Judge. See United States v. Schronce, 727 F.2d 91, 94 & n. 4 (4th Cir.), *cert. denied*, Schronce v. United States, 467 U.S. 1208 (1984); and Wright v. Collins, 766 F.2d 841, 845-47 & nn. 1-3 (4th Cir. 1985). Moreover, if a party files specific objections to a portion of a magistrate judge's Report and Recommendation, but does not file specific objections to other portions of the Report and Recommendation, that party waives appellate review of the portions of the magistrate judge's Report and Recommendation to which he did not object. In other words, a party's failure to object to one issue in a magistrate judge's Report and Recommendation precludes that party from subsequently raising that issue on appeal, even if objections are filed on other issues. Howard v. Secretary of HHS, 932 F.2d 505, 508-509 (6th Cir. 1991). See also Praylow v. Martin, 761 F.2d 179, 180 n. 1 (4th Cir.) (party precluded from raising on appeal factual issue to which it did not object in the district court), *cert. denied*, 474 U.S. 1009 (1985). In Howard, *supra*, the Court stated that general, non-specific objections are *not* sufficient:

A general objection to the entirety of the [magistrate judge's] report has the same effects as would a failure to object. The district court's attention is not focused on any specific issues for review, thereby making the initial reference to the [magistrate judge] useless. *** This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrates Act. *** We would hardly countenance an appellant's brief simply objecting to the district court's determination without explaining the source of the error.

Accord Lockert v. Faulkner, 843 F.2d 1015, 1017-19 (7th Cir. 1988), where the Court held that the appellant, who proceeded *pro se* in the district court, was barred from raising issues on appeal that he did not specifically raise in his objections to the district court:

Just as a complaint stating only 'I complain' states no claim, an objection stating only 'I object' preserves no issue for review. *** A district judge should not have to guess what arguments an objecting party depends on when reviewing a [magistrate judge's] report.

See also Branch v. Martin, 886 F.2d 1043, 1046 (8th Cir. 1989) ("no de novo review if objections are untimely or general"), which involved a *pro se* litigant; and Goney v. Clark, 749 F.2d 5, 7 n. 1 (3rd. Cir. 1984) ("plaintiff's objections lacked the specificity to trigger *de novo* review"). This notice, hereby, apprises the parties of the consequences of a failure to file specific, written objections. See Wright, *supra*.; and Small v. Secretary of HHS, 892 F.2d 15, 16 (2nd Cir. 1989). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing addressed as follows:

Larry W. Propes, Clerk
 United States District Court
 901 Richland Street
 Columbia, South Carolina 29201